

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In Re Request of

**ASSOCIATION FOR LOCAL
 TELECOMMUNICATION SERVICES**

CCB/CPD 97-30

For Clarification of
 the Commission's Rules Regarding
 Reciprocal Compensation for
 Information Service Provider Traffic

To: The Chief, Common Carrier Bureau

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch"), pursuant to the Public Notice released July 2, 1997,^{1/} hereby replies to the comments filed in reference to the letter filed by the Association for Local telecommunication Services ("ALTS") with the Common Carrier Bureau (the "Bureau") requesting expedited clarification of the Commission's rules regarding the rights of a competitive local exchange carrier ("CLEC") to receive reciprocal compensation pursuant to Section 251(b)(5) of the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996^{2/} (the "1996 Act"), for the transport and termination of telecommunications traffic to CLEC subscribers that are internet service providers ("ISPs"). The following is respectfully shown:

^{1/} DA 97-1399.

^{2/} Pub. L. No. 104-104, 110 Stat. 56, *codified at*, 47 U.S.C. Sections 151 *et seq.*

1. Several parties, including AirTouch, filed comments with reference to the ALTS request. Generally, the comments broke down along expected lines. For example, incumbent LECs^{3/} argue that traffic transported and terminated by telecommunications carriers destined to ISPs is not subject to reciprocal compensation. Understandably CLECs and ISPs^{4/} assert that CLECs are entitled to compensation for such traffic.

2. The Commission should take a step back from the positions of the parties in resolving this issue. Although the parties bring up many different facets of the services provided to ISPs in arguing their positions, the seminal issue is whether the ISP is an end user or not. If the ISPs are end users, then the telecommunications carrier serving them is entitled to compensation for the transport and termination functions for traffic delivered to the ISP. If the ISPs are not end users (either factually or for regulatory purposes), then the telecommunications carrier serving them would still be entitled to compensation for the functions it performs,

^{3/} Comments of the United States Telephone Association and Member Companies ("USTA Comments"), Ameritech Comments, Comments of the Southern New England Telephone Company ("SNET Comments"), and Comments of Cincinnati Bell Telephone Company ("CBT Comments").

^{4/} Comments of Adelphia Communications Corporation, *et al.* ("Adelphia Comments"), Comments of America Online, Inc. ("AOL Comments"), Comments of Cox Communications, Inc. ("Cox Comments"), Comments of ACC Corp. ("ACC Comments"), Comments of Dobson Wireless, Inc. ("Dobson Comments"), Comments of Winstar Communications, Inc. ("Winstar Comments"), Comments of Teleport Communications Group, Inc. ("Teleport Comments"), Comments of Hyperion Telecommunications, Inc., *et al.* ("Hyperion Comments"), Comments of KMC Telecom, Inc., *et al.* ("KMC Comments"), Comments of Vanguard Cellular Systems, Inc. ("Vanguard Comments"), Comments of Compuserve Incorporated ("Compuserve Comments"), Comments of MCI Telecommunications Corporation ("MCI Comments"), Comments of Sprint Corporation ("Sprint Comments"), Comments of Spectranet International ("Spectranet Comments"), Comments of XCOM Technologies, Inc. ("XCOM Comments"), Comments of the Commercial Internet Exchange Association ("CIX Comments"), Comments of American Communications Services, Inc. ("ACSI Comments"), and Comments of Focal Communications, Inc. ("Focal Comments").

unless it is merely providing access. AirTouch respectfully submits that prior FCC rulings that ISPs are to be treated as end users require that the ALTS request be granted.

3. As AirTouch and others pointed out in their comments,^{5/} the FCC has ruled that ISPs are to be treated as end users for regulatory purposes and has historically treated ISPs as end users.^{6/} This classification was upheld recently in the Interconnection First Report and Order,^{7/} in which the Commission concluded that "enhanced service providers ... are ... not telecommunications carriers within the meaning of the Act."

4. Several commenters, including AirTouch,^{8/} correctly reasoned that as a result of the prior classification of ISPs as end users, calls to ISPs are

5/ Adelphia Comments, pp. 3-4, 12-15; AOL Comments, pp. 7-8; Cox Comments, *passim.*; ACC Comments, *passim.*; Dobson Comments, pp. 3-4; Winstar Comments, pp. 3, 6; Teleport Comments, pp. 2-3; Vanguard Comments, pp. 6-7 and n. 8; Compuserve Comments, p. 4; MCI Comments, pp. 1-4; AT&T Comments, p. 3; Sprint Comments, pp. 2-4; Spectranet Comments, pp. 3-5; ACSI Comments, p. 4; and Focal Comments, p. 6.

6/ See, MTS and WATS Market Structure, Memorandum Opinion and Order, (Docket No. 78-72), 97 FCC 2d 682, 711-722 (1983); Access Charge Reform, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, (CC Docket No. 96-262), FCC 96-488 released December 24, 1996, ¶ 285 [1997 FCC LEXIS 2591] (enhanced serviced providers ("ESP") and ISPs are able to purchase telecommunications services "under the same intrastate tariffs available to end users." See also, ESP Exemption Order (CC Docket No.87-215), 3 FCC Rcd. 2631, 2633 (1988); Part 69 Open Network Architecture Order, (CC Docket No. 89-79), 6 FCC Rcd 4524, 4535 (1991).

7/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499, ¶ 995 (1996).

8/ Adelphia Comments, pp. 3-4, 12-17; ACC Comments, pp. 4-5; Dobson Comments, pp. 4, 8; Teleport Comments, pp. 2-5; KMC Comments, pp. 5-6; AT&T Comments, pp. 3-4; XCOM Comments, p. 6; ACSI Comments, p. 4; and Focal Comments, pp. 6-7.

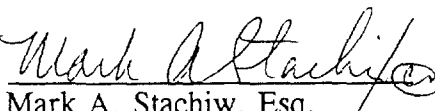
deemed to terminate at the ISP's premises.^{9/} Where the ISP's premises are within the same local area as is the calling party, those calls are subject to the reciprocal compensation provisions contained in Section 251(b)(5) of the 1996 Act.^{10/} CLECs carrying such traffic are entitled to reciprocal compensation.

5. In light of the foregoing, AirTouch respectfully submits that the resolution of the ALTS request requires a straight-forward analysis which reflects consideration of the historical classification of ISPs as end users. Based upon such an analysis, the Commission should confirm that telecommunications carriers are entitled to compensation for traffic terminated to ISPs in the local calling area by virtue of their treatment as end users.

WHEREFORE, the foregoing having been duly considered, AirTouch respectfully requests that the ALTS request be granted for the reasons described herein.

Respectfully submitted,

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^{9/} Some commenters argue that the Commission must look at the call as a single transmission from end-to-end. USTA Comments, pp. 5-6; Ameritech Comments, pp. 10-11; SNET Comments, p. 4. While AirTouch agrees that such calls are single end-to-end transmissions, the Commission need not reach this issue. Because ISPs have been deemed to be end users for regulatory purposes, calls destined for ISPs are deemed to terminate at the ISP's premises.

^{10/} Section 251(b)(5) of the Act imposes on every ILEC the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

Certificate of Service

The undersigned hereby certifies that on this 29th day of July, 1997, a true and correct copy of the foregoing Reply Comments of AirTouch Paging was sent via first-class mail, postage prepaid, or hand delivered, to the following:

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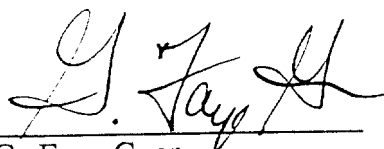
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